

Michael Ioane  
 214 W. Robinson Street  
 Carson City, NV 89703  
 775-881-2172  
 Propria Persona Sui Juris

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEVADA (RENO)

MICHAEL IOANE,	)	CASE NO.	3:09-cv-00243
	)		
Plaintiff,	)		
	)	COMPLAINT FOR INJUNCTIVE AND	
vs.	)	DECLARATORY RELIEF UNDER	
	)	FREEDOM OF INFORMATION ACT	
Commissioner of Internal Revenue,	)	AND PRIVACY ACT	
<i>ex rel,</i>	)		
United States of America	)		
	)		
Defendant.	)		

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 and 5 U.S.C. §552a (4) and the First, Fifth, and Ninth Amendment to the original organic Constitution for the United States of American.

VENUE

2. Venue in this Court is correct because the plaintiff is located within this district.
3. The Plaintiff is an American Citizen.
4. Defendants Internal Revenue Service is an agency of the Executive Branch in which the documents are located; defendant United States is sued in its official capacity as custodian of the requested documents.
5. On February 20, 2009, I mailed to the director, a true and correct copy of the attached hereto as

Paid Amt \$ 350 Date 05-11-09  
 Receipt # 70021390 Initials KLO

**Exhibit A and B**; which plaintiff requested access to certain documents by way of the Privacy Act and Freedom of Information Act.

6. Defendant has failed to respond to plaintiff's request within the time limits as prescribed by the Freedom of Information Act, 5 USC 522(a)(6)(i) and the Privacy Act, 5 U.S.C. 522a(d)(2).

7. Plaintiff has a statutory right to the records requested, and there is no legal basis for defendant refusal to provide them to plaintiff.

8. Plaintiff is entitled to receive Attorney fees and costs and damages against defendant.

### **Second Cause of Action**

9. Defendant refused to comply with plaintiff's request, denying plaintiff access to certain documents, by letter dated September 11, 2008, of which a true and correct copy is attached hereto as **Exhibit C**.

10. Plaintiff appealed defendant's denial by letter dated September 22, 2008, of which a true and correct copy is attached hereto as **Exhibit D**.

11. Defendant denied plaintiff's administrative appeal to certain documents by letter dated January 13, 2009, of which a true and correct copy is attached as **Exhibit E**.

12. Plaintiff has exhausted his administrative remedies and is entitled, pursuant to law, to inspect and copy of the requested documents.

13. Plaintiff is entitled to receive Attorney fees and costs and damages against defendant.

WHEREFORE, plaintiffs seek the following relief:

1) The Court issue an order compelling defendants to produce the requested documents for plaintiff to inspect and copy:

2) that this Court award plaintiff costs and disbursements in this action as provided for by 5 U.S.C. 552(g)(4)(A)(B);

3) that this Court grant such other further relief as the Court deems appropriate, just or proper; and

4) Provide for expedition of proceedings on this complaint as provided for by 5 U.S.C.

552(a)(4)(C).

Date: 5/29, 2009

respectfully submitted,

By

  
Michael Joane

Exhibit A

PRIVACY ACT REQUEST

From: Michael Ioane  
214 W. Robinson Street  
Carson City, NV 89703  
775-881-2172  
SS# [REDACTED]

February 20, 2009

District Director  
c/o Internal Revenue Service  
5104 N. Blyth Avenue, Suite 207  
Fresno, CA 93722-6429  
**Attn:** Disclosure Officer  
**RE:** Request for Documents.

Dear Sir:

1. This is a request under the Privacy Act, 5 USC 552a. This is my promise to pay fees and costs for locating, duplicating and reviewing the documents and information requested below.
2. If some of my requests are exempt from release, please send me those portions reasonably segregatable, and provide me with an indexing, itemization and detailed justification concerning which you are not releasing
3. This request pertains to years 1996 through 2008
4. Please send a copy of all documents maintained in a system of records known as "Controlled Accounts-Open and Closed, Criminal Investigative Division TC 910/TC 914/TC 916/TC 918-Treasury/IRS, 46.004", ( or its current equivalent); not excluding a copy of all source documents, which pertain to me.
5. Please send me a copy of all documents maintained by the IRS pertaining to the enforcement of criminal laws; not excluding a copy of all source documents, which pertain to me.
6. Please provide me any documents, which are being compiled for law enforcement purposes; not excluding a copy of all source documents, which pertain to me.
7. Please provide me all case reports, memorandums, dossier, letters, witness testimony, witness statements, documents signed or printed, agent work product, memos by and between IRS employees, their supervisors and superiors, all communication written, by e-mail, all communication by and between IRS special agent(s) and the United States Attorney General's office, in Fresno California, all hand written memos, and all communication by and between the IRS and the D.O.J. Washington D.C., which relate to or are being used in a criminal investigation regarding me not excluding a copy of all source documents, which pertain to me. These items are in the custody and control of Special Agent Michele Casarez, of Fresno California and/or her supervisor and superiors. Additionally, copies of these items are in the custody and control of the Assistant United States Attorney's Office, in Fresno, California.
8. Please provide copies of all Grant Jury transcripts, which pertain to me and generated in the Fresno, California venue, not excluding all source documents, which pertain to me.

9. Please provide all documents that are located in the "Data Tech" Division and under the management and control of the data tech employee Debbie White, located at 950 Pennsylvania Avenue., Washington, D.C., tax division, (( 202) 514-4344); not excluding a copy of all source documents, which pertain to me.
10. Please provide all documents maintained in the system of records known as "Chief Counsel case files", (records and file); not excluding a copy of all source documents, which pertain to me.
11. Please provide all documents held by Revenue Agent Fred Chynoweth, of Bakersfield California referred to as case files, collection files and/or his administrative files and all source documents as it pertains to me.
12. Please provide all documents held by Revenue Agent Michael Hoos, of Bakersfield California referred to as case files, collection files and/or his administrative files and all source documents as it pertains to me.
13. Please provide all the documents, which support the Internal Revenue Services' position that Acacia Corporate Management LLC is a nominee of V. Steven Booth, not excluding all source documents as it pertains to me. These documents are in the control and possession of Attorney Lauren M. Castaldi of the DOJ ((202) 514-9668).
14. Please provide all the documents, which support the Internal Revenue Services' position that Bakersfield Properties and Trust Company is a nominee of V. Steven Booth, not excluding all source documents as it pertains to me. These documents are in the control and possession of Attorney Lauren M. Castaldi of the DOJ ((202) 514-9668).
15. Please provide all the documents, which support the Internal Revenue Services' position that Align Enterprises Trust and Alpha Omega Trust are nominees of V. Steven Booth, not excluding all source documents as it pertains to me. These documents are in the control and possession of Attorney Lauren M. Castaldi of the DOJ ((202) 514-9668).
16. Please provide the documentation that supports the Internal Revenue Services' position that V. Steven Booth and I have somehow committed a tax crime related to V. Steven Booth's personal tax returns, as repeatedly stated by Attorney Lauren M. Castaldi of the DOJ ((202) 514-9668), in civil litigation case number 07-cv-1129.

I understand the penalties provided in 5 U.S.C. 552 a(i)(3) for requesting or obtaining access to records under false pretenses. I am the individual making this request and this is my signature.

I, the undersigned, being of legal age and competent to testify as to matters declared herein below, do hereby declare, under 28 U.S.C. 1746(1), that the foregoing is true and correct.

Respectfully,

Date: February 20, 2009

By:   
Requestor

**Identification Enclosed**

Exhibit B

FREEDOM OF INFORMATION ACT REQUEST

From: Michael Ioane  
214 W. Robinson Street  
Carson City, NV 89703  
775-881-2172  
[REDACTED]

February 20, 2009

District Director  
C/o Internal Revenue Service  
5104 N. Blyth Avenue, Suite 207  
Fresno, CA 93722-6429  
**Attn:** Disclosure Officer  
**RE:** Request for Documents.

Dear Sir:

1. This is a request under the Privacy Act, 5 USC 552. This is my formal request that you either amend or expunge the records described below.
2. If some of my requests are exempt from release, please send me those portions reasonably segregatable, and provide me with an indexing, itemization and detailed justification concerning which you are not releasing
3. This request pertains to years 1996 through 2008
4. Please send a copy of all documents maintained in a system of records known as "Controlled Accounts-Open and Closed, Criminal Investigative Division TC 910/TC 914/TC 916/TC 918-Treasury/IRS, 46.004", ( or its current equivalent); not excluding a copy of all source documents, which pertain to me.
5. Please send me a copy of all documents maintained by the IRS pertaining to the enforcement of criminal laws, not excluding a copy of all source documents, which pertain to me.
6. Please provide me any documents, which are being compiled for law enforcement purposes, not excluding a copy of all source documents, which pertain to me.
7. Please provide me all case reports, memorandums, dossier, letters, witness testimony, witness statements, documents signed or printed, agent work product, memos by and between IRS employees, their supervisors and superiors, all communication written, by e-mail, all communication by and between IRS special agent(s) and the United States Attorney General's office, in Fresno California, all hand written memos, and all communication by and between the IRS and the D.O.J. Washington D.C., which relate to or are being used in a criminal investigation regarding me not excluding a copy of all source documents, which pertain to me. These items are in the custody and control of Special Agent Michele Casarez, of Fresno California and/or her supervisor and superiors. Additionally, copies of these items are in the custody and control of the Assistant United States Attorney's Office, in Fresno, California.
8. Please provide copies of all Grant Jury transcripts, which pertain to me and generated in the Fresno, California venue, not excluding all source documents, which pertain to me.



9. Please provide all documents that are located in the "Data Tech" Division and under the management and control of the data tech employee Debbie White, located at 950 Pennsylvania Avenue., Washington, D.C., tax division, (( 202) 514-4344); not excluding a copy of all source documents, which pertain to me.
10. Please provide all documents maintained in the system of records known as "Chief Counsel Criminal Tax Case files-Treasury/IRS, 90-001", not excluding a copy of all source documents, which pertain to me.
11. Please provide all documents held by Revenue Agent Fred Chynoweth, of Bakersfield California referred to as case files, collection files and/or his administrative files and all source documents as it pertains to me.
12. Please provide all documents held by Revenue Agent Michael Hoos, of Bakersfield California referred to as case files, collection files and/or his administrative files and all source documents as it pertains to me.
13. Please provide all the documents, which support the Internal Revenue Services' position that Acacia Corporate Management LLC is a nominee of V. Steven Booth, not excluding all source documents as it pertains to me. These documents are in the control and possession of Attorney Lauren M. Castaldi of the DOJ ((202) 514-9668).
14. Please provide all the documents, which support the Internal Revenue Services' position that Bakersfield Properties and Trust Company is a nominee of V. Steven Booth, not excluding all source documents as it pertains to me. These documents are in the control and possession of Attorney Lauren M. Castaldi of the DOJ ((202) 514-9668).
15. Please provide all the documents, which support the Internal Revenue Services' position that Align Enterprises Trust and Alpha Omega Trust are nominees of V. Steven Booth, not excluding all source documents as it pertains to me. These documents are in the control and possession of Attorney Lauren M. Castaldi of the DOJ ((202) 514-9668).
16. Please provide the documentation that supports the Internal Revenue Services' position that V. Steven Booth and I have somehow committed a tax crime related to V. Steven Booth's personal tax returns, as repeatedly stated by Attorney Lauren M. Castaldi of the DOJ ((202) 514-9668), in civil litigation case number 07-cv-1129.
17. Please provide the affidavit that Special Agent Kent Spjute when obtaining search warrant, not excluding all source documents pertaining to me.

I understand the penalties provided in 5 U.S.C. 552 a(i)(3) for requesting or obtaining access to records under false pretenses. I am the individual making this request and this is my signature.

I, the undersigned, being of legal age and competent to testify as to matters declared herein below, do hereby declare, under 28 U.S.C. 1746(1), that the foregoing is true and correct.

Respectfully,

By: 

Requestor

Date: February 20, 2009

**Identification Enclosed**

EXHIBIT C



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

SEP 11 2008

Michael Scott and Shelly Jean loane  
108 East John Street  
Carson City, NV 89706

Dear Mr. Michael and Shelly loane:

This responds to your Freedom of Information Act (FOIA) request of July 7, 2008, received in our office on July 14, 2008. I have enclosed a copy of your request for your reference.

Item 5: You asked for a copy of the audit and/or collection file held by Revenue Officer, Paul Enjalran for tax years 1998, 1999, 2000, 2001, 2002, and 2003. Of the 304 pages located in response to your request, I am enclosing 251 pages. I am withholding 126 pages in part and 53 pages in full for the following reasons:

I am withholding this information under FOIA exemption (b)(3). The withheld portions are the tax information of another person. FOIA exemption (b)(3) requires us to withhold information that is specifically exempted from disclosure by another law. The law supporting this exemption is Internal Revenue Code section 6103(a).

I am withholding this information under FOIA exemption (b)(7)(C). This portion of FOIA exempts from disclosure personal information in law enforcement records that if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

I am withholding this information under FOIA exemption (b)(5). This portion of FOIA exempts from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. There are three primary privileges covered by this exemption:

- The deliberative process privilege protects documents that reflect the pre-decisional opinions and deliberations that play a direct part in the process of making recommendations on legal or policy matters.
- The attorney work product privilege protects documents prepared by an attorney or other Service employee during litigation or in reasonable contemplation of litigation, and

- The attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice.

I am withholding this information under FOIA exemption (b)(7)(A). This portion of FOIA exempts from disclosure records or information compiled for law enforcement purposes, but only to the extent that production of such records could interfere with enforcement proceedings.

Disclosure of this information is also exempt under FOIA subsection (b)(3) supported by Internal Revenue Code section IRC Section 6103(e)(7), because release would impair federal tax administration.

I am withholding this information under FOIA exemption (b)(7)(D). This portion of FOIA exempts the disclosure of records or information compiled for law enforcement purposes to the extent that their release could disclose the identity of a confidential source.

We are denying access to some of the requested records. FOIA exemption (b)(3) requires us to withhold information that is specifically exempted from disclosure by another law. The law supporting this exemption is Title 31 United States Code section 5319.

The redacted portions of each page are marked by the applicable FOIA exemptions. This constitutes a partial denial of your request. I have enclosed Notice 393 explaining your appeal rights.

Items 6, 9, 10, and 11: You asked for copies of documents: which indicate that you have a legal residence address in California; that indicate that you have assets in California; you transferred assets, which you owned to trusts or any other entity; and which indicate that you have not maintained a legal residence at: 108 East John Street, Carson City, NV 89706. To the extent that responsive documents may or may not exist, they would have been provided in the responsive documents for item 5 above.

Items 7, and 8: You have asked for copies of documents: which indicated that you are the owners of Paradise Solutions, American Federal Trust, and First Amendment Publishers; and that Paradise Solutions, American Federal Trust, and First Amendment Publishers are grantor trusts of the loanes. The Freedom of Information Act (FOIA), 5 U.S. Code 552, provides access by the public to records maintained by the Federal government. The Act, and regulations promulgated thereunder, sets forth certain requirements must be met for a request to be processed. In order for the Disclosure office to continue to process this portion of your request, please send the information

needed to meet the requirements of the Act as indicated below, and we will try to honor this portion of your request.

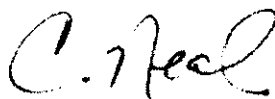
- If you are a trustee or beneficiary of a trust you must provide satisfactory evidence that you are the trustee or beneficiary of the trust. The following documents are all necessary for release of trust information:
  - a) A copy of the complete valid trust instrument
  - b) A copy of the instrument appointing you as trustee
  - c) A copy of all prior appointment documents (i.e., documents showing that the individual who appointed you as trustee, had the authority to do so)
  - d) A copy of the Fiduciary declaration and statement

Please provide the perfected information listed above within 35 days from this date. Upon receipt of the perfected information, we will make every effort to respond/complete the processing this portion of your request. The 20 days we are allowed to comply with your request will begin when we receive the requested information.

The fee for copying the released documents is \$30.20, (\$0.20 per page after an allowance of 100 pages at no charge). Please send your check or money order payable to the Treasury of the United States to the address below. We must receive payment by October 17, 2008. Fees paid are reimbursement for services performed and are not refundable. If you fail to pay the fees, your name will be added to the FOIA Non-Payment List, and no future requests will be processed until all fees are paid in full.

If you have any questions please call Disclosure Specialist, Teresa Caban, ID # 77-01977, at (408) 817-6730 or write to: Internal Revenue Service, Disclosure Office 14, 55 S. Market St., Stop # HQ-4603, San Jose, CA 95113. Please refer to case number 14-2008-03241.

Sincerely,



C. Neal  
Acting Disclosure Manager  
Disclosure Office 14

Enclosures

TC

FREEDOM OF INFORMATION ACT REQUEST AND/OR PRIVACY ACT

MICHAEL SCOTT IOANE  
108 EAST JOHN STREET  
CARSON CITY, NV 89706  
SOCIAL SECURITY [REDACTED]

July 7, 2008

Internal Revenue Service  
c/o FOIA Disclosure Officer  
1301 Clay Street  
1040S  
Oakland, CA 94612

INTERNAL REVENUE SERVICE  
OAKLAND, CA

JUL 14 2008

DISCLOSURE OFFICE  
OAKLAND, CA

Greetings:

1. This is a request under the Freedom of Information Act, 5 USC 552. This is my firm promise to pay fees and costs for locating, duplicating and reviewing the documents and information requested below.
2. If some of my request is exempt from release, please send me those portions reasonably segregatable, and provide me with an indexing, itemization and detailed justification concerning information, which you are not releasing.
3. This request pertains to the year 1998 through 2003.
4. The information is needed by the requestor to know and understand the administrative process of this agency.
- ✓ 5. Please provide copies of all documents, which are in the audit and/or collection file held by Paul Enjalran, employee number 68-11664, (of Oakland California 510-637-4552), related to Michael and Shelly Ioane 567-251-9566; specifically the file, which was assigned to Paul Enjalran by the group supervisor Douglas Hall of Sacramento, California 916-974-5759 for collection purposes, ( Copy of audit collection letter from Paul Enjalran is enclosed).
- ✓ 6. Please provide all documents, which indicate that Michael and Shelly Ioane have a legal residence address in California.
- ✓ 7. Please provide the documents, which indicate that Michael and Shelly Ioane are the owners of Paradise Solutions, American Federal Trust and First Amendment Publishers.
- ✓ 8. Please provide the documents, which indicate that Paradise Solutions, American Federal Trust and First Amendment Publishers are grantor trusts of the Ioanes.
- ✓ 9. Please provide the documents that indicate that Michael and Shelly Ioane have assets in the state of California.
- ✓ 10. Please provide the documents that indicate that Michael and Shelly Ioane transferred assets, which they owned to trusts or any other entity.

(CA)

11. Please provide the documents, which indicate that Michael and Shelly Ioane have not maintained a legal residence address at: 108 East John Street, Carson City, NV 89706, since around 1999.

I understand the penalties provided in 5 U.S.C. 552a (i)(3) for requesting or obtaining access to records under false pretenses.

It is my understanding that the Agency has 20 days to answer the above questions and provide the documents requested or to provide us with an indexing, itemization and detailed justification concerning information, which you are not releasing.

I have attached a copy of my Identification, so that you will see that I am authorized to obtain this information.

Please mail all responses to: Michael & Shelly Ioane at our resident address of: **THE ADDRESS REFERENCED ABOVE**

Dated July 7, 2008

Respectfully,

MICHAEL SCOTT IOANE - 567-25-9566

By   
Requestor, Michael S. Ioane

SHELLY JEAN IOANE

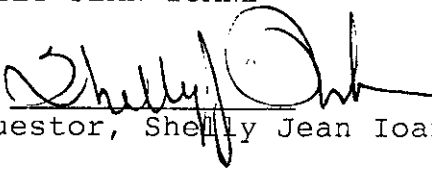
By:   
Requestor, Shelly Jean Ioane

Exhibit D



FREEDOM OF INFORMATION ACT APPEAL

FROM: MICHAEL SCOTT IOANE  
108 East John Street  
Carson City, 89706  
NEVADA

Freedom of Information Act  
Commissioner of Internal Revenue  
C/O IRS Appeals  
Attn: FOIA APPEALS  
M/Stop 55203  
5045 E. Butler Avenue  
Fresno, CA 93727-5136  
Re: case # 14-2008-03163

September 22, 2008

Dear Sir:

I hereby appeal the Internal Revenue Service denial for release of documents by letter dated September 11, 2008

       The agency has failed to reply to the enclosed request within the time specified by Title 5 U.S.C. 552.

  x   A copy of my original request is enclosed.

         x   A copy of my original request, and a partial denial are enclosed. The agency has failed, in part, to reply to the enclosed request. Title 5 U.S.C. 552 provides, as requested in paragraph numbered 2 of the enclosed request, that the agency furnish the requestor with an indexing, itemization, and detailed justification concerning information which the agency is not releasing.

         X   Title 5 U.S.C. 552 does not permit the assertion of personal opinions as an exemption from disclosure.

         X   The law requires that you respond within Thirty days of this Appeal Request. Failure to produce the requested items listed in my original Appeal is grounds for civil action. The Department will be responsible for all Attorney fees, costs and \$1,000.00 dollars per document for each document not released now. However, obtained through court action.

Dated: 9/22/2008

Respectfully,

MICHAEL SCOTT IOANE

By:   
Michael S. Ioane, Requestor

Exhibit E

**Internal Revenue Service**  
Fresno Campus Appeals Office  
Mail Stop 55203  
Fresno, CA 93888-0700

**Department of the Treasury**

**Person to Contact:**  
Terri Carrillo  
Employee ID Number: 0157528  
Tel: (559) 253-4803  
Fax: (559) 253-4890

Date: JAN 13 2009

**Refer Reply to:**  
AP:FRS:CO:TC

Michael S. Ioane  
108 East John Street  
Carson City, NV 89706

**In Re:**  
Freedom of Information Act  
**Disclosure Case Number:**  
14-2008-03241

Dear Michael S. Ioane:

This letter is in response to your September 22, 2008 Freedom of Information Act (FOIA) appeal of the September 11, 2008 response of Area 14 San Jose, CA Disclosure office to your July 7, 2008 request for copies of all documents in the IRS audit and collection files for tax years 1998 through 2003. Also, you requested documents that indicate your legal address in California, indicate that ownership of business entities listed on the FOIA request, documents that indicate you have grantor trust of those named business entities, and documents that indicate you have assets in the State of California

The Disclosure office stated that they found 304 pages of responsive documents. The Disclosure office stated that they provided 251 pages of responsive documents. The Disclosure Office response also provided 126 documents that we withheld in part and withheld 53 pages in full citing FOIA exemptions (b)(3) in conjunction with IRC §6103, (b)(5), (b)(7)(A), (C) & (D).

The appeal that you submitted stated that you are appealing the denial of records and the lack of index. The appeal states that the FOIA exemptions cited by the Disclosure office are personal opinions asserted by the Disclosure office.

We have reviewed the response of the Disclosure Office and have determined that it is appropriate under the circumstances. We cannot address the relevance of the information nor can we provide the redacted information based on your perceived need for it. Our sole responsibility is to determine if the documents were properly withheld under the FOIA.

FOIA subsection (b)(3) states that the disclosure provisions of the FOIA do not apply to matters specifically exempted by statute from disclosure, provided that such statute:

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

I.R.C. Section 6103 has been held to be a subsection (b)(3) statute under the FOIA. Church of Scientology v. IRS, 484 U.S. 9 (1987); Chamberlain v. Kurtz, 589 F.2d 827

(5th Cir. 1979), cert. denied, 444 U.S. 842 (1979). When disclosure of return information will seriously impair Federal tax administration, it may be withheld.

Chermack v. IRS, 81-1 USTC Paragraph 9337 (N.D. Tex. 1981). It has been determined that the disclosure of some of the information withheld would impair Federal tax administration by interfering with the pending administrative proceedings; and, therefore, this information is exempt from disclosure pursuant to exemption (b)(3) in conjunction with I.R.C. Section 6103(e)(7).

FOIA subsection (b)(5) exempts "inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency." The Supreme Court has held that the attorney work-product and the attorney-client privileges fall within the ambit of the (b)(5) exemption of the FOIA. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975). The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. See Hickman v. Taylor, 329 U.S. 495, 509-10 (1947). Its purpose is to protect the adversarial trial process by insulating the attorney's preparation from scrutiny. See Jordan v. Department of Justice, 591 F.2d 753, 775 (1978) (en banc).

Exemption 7 allows for the withholding of "information compiled for law enforcement purposes." 5 U.S.C. Section 552(b)(7). The exemption was designed to ensure that sensitive law enforcement information is protected regardless of the particular format or record in which the information is maintained. The agency must demonstrate that the information was compiled in the course of enforcing a statute or regulation within its authority. See Lewis v. IRS, 823 F.2d 375 (9th Cir. 1987).

FOIA subsection (b)(7)(A) exempts from disclosure records or information compiled for law enforcement purposes if the production of such law enforcement records could reasonably be expected to interfere with pending or prospective law enforcement proceedings. The term "law enforcement" refers to enforcement through civil, criminal, or regulatory proceedings. Subsection (7)(A) applies "whenever the government's case in court would be harmed by the premature release of the evidence or information," NLRB v. Robbins Tire & Rubber Co., 473 U.S. 214, 232 (1978), or where the disclosure would impede any necessary investigation prior to the proceeding, National Public Radio v. Bell, 431 F. Supp. 509, 514-15 (D. D.C. 1977). In the instant case, disclosure would interfere with the pending administrative proceedings.

Subsection (b)(7)(C) exempts from disclosure records or information compiled for law enforcement purposes to the extent that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. See United States Dep't of Justice v. Reporters Committee, 459 U.S. 749 (1989). Exemption (b)(7)(C) requires a balancing of the public interest in the disclosure of third party identities with the privacy interests of those individuals.

FOIA subsection (b)(7)(D) is applicable in this matter. The (b)(7)(D) exemption protects records or information compiled for law enforcement purposes to the extent that their release "could reasonably be expected to disclose the identity of a confidential source ... and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation ... information furnished by the confidential source...." The withheld material contains information which could reasonably be expected to directly or indirectly disclose the identity of confidential sources and which was provided

by the confidential information sources in the course of a criminal investigation. Thus, this material is exempted from mandatory disclosure pursuant to FOIA subsection

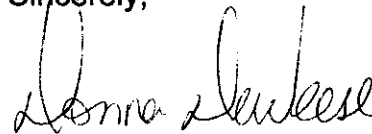
(b)(7)(D). See, Kiraly v. FBI, 728 F.2d 273, 278 (6th Cir. 1984); Nix v. United States, 572 F.2d 998 (4th Cir. 1978); Gregg v. IRS, 45 AFTR 2d 80-931 (D.D.C. 1980).

Also FOIA does not entitle a requester to receive an index during the administrative process as the courts do not require the submission of an index prior to the time when a dispositive motion is filed. See, e.g., Edmond v. U.S. Attorney, 959 F. Supp. 1, 5 (D.D.C. 1997) (rejecting, as premature, request for Vaughn Index when agency had not processed plaintiff's request), Tannehill v. Dept. of the Air Force, No. 87-1335, slip op. at 1 (D.D.C. Aug. 20, 1987) (noting that standard practice is to await filing of agency's dispositive motion before deciding whether additional indexes will be necessary); Miscavige, 2 F.3d at 369 ("The plaintiff's early attempt in litigation of this kind to obtain a Vaughn Index...is inappropriate until the government has first had a chance to provide the court with the information necessary to make a decision on the applicable exemptions."). Therefore, any effort to compel an agency to prepare a Vaughn Index prior to the filing of the agency's dispositive motion is typically denied as premature.

To summarize, we can only address whether the search was reasonable in regard to the adequacy of a search, an agency must prove that "each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." See Sosa v. FBI, No. 93-1126, slip op. at 1 (D.D.C. Nov. 4, 1993). We believe that the Disclosure Office has met its burden in regard to the adequacy of the search and adequately applied the exemptions when withholding in full and in part the documentation requested. We believe that the Disclosure Office responded to your request appropriately.

The FOIA requires us to advise you of the judicial remedies granted in the Act. You may file a complaint in the United States District Court for the District in which you reside, or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donna DeWeese".

Donna DeWeese  
Appeals Team Manager